FOR ARGUMENT

Supreme Court, U.S.
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No. 78-1143

In the Supreme Court of the United States

OCTOBER TERM, 1979

CYRUS VANCE, SECRETARY OF STATE, APPELLANT

v.

LAURENCE J. TERRAZAS

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF FOR THE APPELLANT

WADE H. McCREE, JR.
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1. Appellee repeatedly insists that "Mexico has abolished the Oath, and thus it was impossible for [appellee] to take an oath" (Br. 19; footnote omitted; see also Br. 3, 8-9, 23). Although appellee does not explain the basis for this contention, his position appears to be that, because Mexico has eliminated any requirement that a prospective citizen's declaration of allegiance be made to God, there could be no "oath" at all.

The district court squarely rejected this meritless contention (J.S. App. 22a; emphasis added): "[F]rom the uncontroverted evidence presented by [appellant], Mexican law does not require an appeal to God as part of the operative language of an oath. (Tr. 237; Def. Ex. No. 29). And while the *oath* of allegiance, per se, has been abolished in Mexico, the *declaration* of allegiance contained in the Application [for a Certificate of Mexican Nationality] and the Certificate [of Mexican Nationality] serves as the equivalent of an oath under Mexican law."

Furthermore, 8 U.S.C. 1481(a) provides that an American citizen "shall lose his nationality by * * * taking an oath *or making an affirmation or other formal declaration of allegiance* to a foreign state or a political subdivision thereof * * *" (emphasis added). See our principal brief at 55-56. Thus, the fact that Mexican law does not require an appeal to God has no bearing on this case, and it matters not whether appellee's act is termed an "oath," a "declaration" or an "affirmation." What matters is that he proclaimed, with appropriate formalities and in a recognized procedure, his allegiance to Mexico.

2. Appellee renews his contentions that, in acting as he did, he "foolishly relied upon [the] expertise" of American consular officials (Br. 4), "was not properly informed of the procedures" (Br. 5), was misled as to the consequences of his actions (*ibid.*), and "stupidly believed" the American vice-consul (Br. 20). The district court, in a finding that the court of appeals did not disturb, set these contentions to rest:

> Much of [appellee's] challenge to the Certificate of Loss of United States Nationality issued by the Department of State rests upon his assertion that he was misled by members of the United States [Consular] Office with whom he dealt. This Court has heard the testimony of [appellee] as well as that of the [Consular] officers and finds that based upon the testimony of record [appellee's] contentions are without merit.

J.S. App. 27a (citations to record omitted).

3. Appellee alleges (Br. 3) that Defendant's Exhibit 32, an application for a Certificate of Mexican Nationality, does not bear his signature and that Wesley Parsons, the American consular officer, so testified. This was not Parsons' testimony. He testified (Tr. 236) that "I don't know whose signature is on [Defendant's Exhibit 32]. I have no way of knowing."

In any event, even assuming that the signature on Defendant's Exhibit 32 is not appellee's, the fact remains that appellee concededly (Tr. 556; Br. 3) did sign Defendant's Exhibit 8 (A. 5a-6a), also an application for a Certificate of Mexican Nationality, dated November 16, 1970. It was *this* application that was submitted to the Mexican government and that resulted in the issuance of a Certificate of Mexican Nationality, as the courts below found (J.S. App. 3a, 4a, 32a-34a). Thus, appellee's assertion (Br. 3, 20) that there was no evidence that Defendant's Exhibit 8, rather than Defendant's Exhibit 32, was the basis for the Certificate of Mexican Nationality is simply incorrect.[1]

4. As the foregoing discussion illustrates, much of appellee's brief is devoted to an attempt to relitigate factual matters that were resolved against appellee by the district court and that were not disturbed by the court of appeals.[2] It bears repeating at this point that the district court found, by a preponderance of the evidence (see 8

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[1]Appellee calls attention (Br. 3) to an evident typographical error in the district court's opinion, which states that appellee took the oath of allegiance to Mexico on "August 3, 1971" (J.S. App. 19a). That this error is merely typographical, and that the correct date is April 3, 1971, is demonstrated by the district court's finding of fact (J.S. App. 28a) that a Certificate of Mexican Nationality was issued to appellee on April 3, 1971. As the district court found (*ibid.*), under Mexican law the oath of allegiance is effective upon issuance of the certificate of nationality, *i.e.*, April 3, 1971. See J.S. App. 21a; Appellant's Br. 5 n.3. Appellee does not dispute this finding. (With some embarrassment, we note that there is a related typographical error at page 5 of our principal brief. The date "April 13, 1971" at the top of the page should read "April 3, 1971." See A. 8a.)

[2]We have not attempted to address every question of conflicting testimony that appellee has raised. With the exception of those we discuss at pages 1-2, *supra*, we believe they are inconsequential on their face.

U.S.C. 1481(c)), that appellee knowingly and voluntarily took an oath of allegiance to Mexico (Findings of Fact 2 and 9, J.S. App. 28a-29a) and that, in doing so, he knowingly and voluntarily renounced allegiance to the United States (Findings of Fact 3 and 9, J.S. App. 28a-29a). The court of appeals stated, in this regard, that "[a]ssuming that the proper standards [of proof] were applied, we are convinced that the record fully supports the [district] court's findings" (J.S. App. 8a). The court of appeals concluded that a higher standard of proof was required, but it did not attempt to resolve the factual disputes under that higher standard. It remanded the case to the district court for such review (J.S. App. 15a-16a).

If, as we believe, the court of appeals erred, its judgment should be reversed and that of the district court reinstated. If, on the other hand, the court of appeals was correct, its judgment should be affirmed; the district court, on remand, can then evaluate the evidence, including the "crucial factor" of credibility (J.S. App. 15a), under the higher standard of proof. In either event, there is no reason for this Court to accept appellee's implicit invitation to reach out now and resolve disputed factual matters.

By the same token, appellee contends (Br. 1-3) that he submitted an application for a Certificate of Mexican Nationality in order to meet graduation requirements of the Mexican school he was attending. Both courts below pointed out that the evidence also could support the conclusion that appellee acted as he did in order to avoid the military draft in the United States (J.S. App. 26a, 5a n.5), but the courts properly concluded that it was unnecessary to decide the motive for appellee's actions. The only material factual determination, in our view, is whether appellee's conduct constitutes a knowing act of expatriation. If it does, then the question whether that

conduct was motivated by a desire to graduate, a desire to avoid the draft, or some other desire, is irrelevant. In any event, if this Court concludes that expatriation requires proof of a specific intent to relinquish citizenship, the factual determination whether appellee had such intent should be decided in the first instance in the district court, which can, in making that decision, place whatever weight it thinks appropriate on evidence of appellee's motive.

For the foregoing reasons and the reasons stated in our principal brief, it is respectfully submitted that the judgment of the court of appeals should be reversed.

WADE H. MCCREE, JR.
Solicitor General

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